

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NORTH DAKOTA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

Respondents.

Case No. 15-1381  
(and consolidated cases)

**PETITIONERS' NONBINDING STATEMENT OF THE ISSUES  
TO BE RAISED**

Pursuant to this Court's order dated November 6, 2015, *see* ECF 1582440, Petitioners in case No. 15-1399 (consolidated with case No. 15-1381) submit the following nonbinding statement of issues to be raised in this proceeding:

1. Whether EPA's inclusion of carbon capture and storage (CCS) as part of the "best system of emission reduction" is improper because EPA fails to meet its burden to show that CCS is an "adequately demonstrated" technology as required by Clean Air Act Section 111(b), 42 U.S.C. § 7411.

2. Whether EPA failed to meet its burden to show that CCS is adequately demonstrated, because EPA improperly characterized the "adequately demonstrated" legal standard, as set out by Clean Air Act Section 111(b), 42

U.S.C. § 7411, as requiring merely a showing of the technology’s “technical feasibility.”

3. Whether EPA’s inclusion of CCS as part of the “best system of emission reduction” is improper because EPA failed to meet its burden to show that CCS is the “best system” considering costs as required by Clean Air Act Section 111(b), 42 U.S.C. § 7411.

4. Whether EPA has failed to demonstrate that an emission standard of 1,400 lbs. CO<sub>2</sub>/MWh, which effectively mandates that affected sources install CCS, is achievable as required by Clean Air Act Section 111(b), 42 U.S.C. § 7411.

5. Whether EPA violated the Energy Policy Act of 2005 by impermissibly considering government-funded technologies from facilities awarded either Clean Coal Power Initiative funding, *see* 42 U.S.C. § 15962, or Section 48A tax credits, *see* 26 U.S.C. § 48A, as evidence that CCS is an adequately demonstrated technology for purposes of Clean Air Act Section 111(b), 42 U.S.C. § 7411.

6. Whether EPA’s decision to implement stringent new source performance standards is arbitrary and capricious because EPA’s rule will, by EPA’s admission, result in negligible CO<sub>2</sub> emission reductions.

7. Whether EPA failed to properly consider whether CO<sub>2</sub> emissions from new fossil fuel-fired power plants are “reasonably . . . anticipated to endanger public health or welfare” as required for EPA to regulate under Clean Air Act § 111(b), 42 U.S.C. § 7411.

8. Whether EPA’s failure to adequately address infrastructure and carbon dioxide transportation costs in States without storage capacity violates the Administrative Procedures Act, 5 U.S. Code § 701 *et seq.*

Dated: December 7, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on this 7th day of December, 2015, a copy of the foregoing *Petitioners' Nonbinding Statement of the Issues to be Raised* was served electronically through the Court's CM/ECF system on all registered counsel.

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